WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

July 22, 1997

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Ex Parte Presentation in CC Docket No. 95-116, RM 8535, Telephone Number Portability

Dear Secretary Caton:

On Monday, July 21, 1997, representatives of Time Warner Communications Holdings Inc. ("TWComm") met with Patrick Donovan, John Scott, Lloyd Collier, Neil Fried, and Lenworth Smith, Jr., all of whom are attorneys in the Competitive Pricing Division of the Common Carrier Bureau. Representing TWComm were Don Shepheard and Thomas Jones. Attached are copies of the outline distributed at the meeting and which describes the substance of TWComm's presentation. In addition to the issues raised in the outline, TWComm also discussed some interim and long term number portability implementation problems it has experienced in the marketplace.

An original and one copy of this letter as well as the attached outline will be filed in the above-referenced docket. Please let me know if you have any questions.

Sincerely,

Thomas Jones

cc: Patrick Donovan
John Scott
Lloyd Collier
Neil Fried
Lenworth Smith

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PRESENTATION OF TIME WARNER COMMUNICATIONS HOLDINGS INC.
TELEPHONE NUMBER PORTABILITY COST RECOVERY
CC Docket No. 95-116

- **THE FCC MUST ACT EXPEDITIOUSLY TO ESTABLISH COST RECOVERY RULES FOR LONG TERM LNP.**

- **CARRIERS SUCH AS SBC SHOULD NOT BE PERMITTED TO ESTABLISH THEIR OWN COST RECOVERY RULES THROUGH PROPOSED TARIFFS.**

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- **ALL TELECOMMUNICATIONS CARRIERS SHOULD PAY FOR LONG TERM LNP.**

  - **This is a statutory requirement:**

    Under Section 251(e)(2) the cost of number portability "shall be borne by all telecommunications carriers on a competitively neutral basis."

  - **It is also sound public policy.**

    Requiring a carrier to support number portability will most likely mean that the carrier's subscribers ultimately pay. Since virtually all consumers of telecommunications services benefit from number portability, all such consumers should support the upgrade. For example:

    - **All local exchange customers benefit from LNP. Even those that never switch carriers will benefit from better service and lower prices caused by the competition that number portability makes possible.**

    - **Long distance customers will benefit from lower access charges that will result from the competition made possible by number portability.**

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- **THE FCC HAS CONSIDERABLE DISCRETION IN SETTING RULES FOR LNP COST RECOVERY AMONG ALL TELECOMMUNICATIONS CARRIERS.**

  - **Agencies have discretion where acting pursuant to an explicit delegation of authority ("as determined by the Commission") to enforce an ambiguous standard such as "competitively neutral."**

  - **Many ILECs have incorrectly suggested that the "competitively neutral" standard requires that each carrier pay the same amount to support LNP.**

  - **The FCC has already established a definition of competitively neutral that permits more flexibility:**

    - **One service provider should not be given an appreciable, incremental cost advantage over another service provider.**

    - **Should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.**

  - **In enforcing a similar cost recovery provision in universal service (Section 254(d)), the Commission felt free to establish two different cost recovery schemes. The two standards effect competitors' incremental costs differently.**

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- **ALL CARRIERS SHOULD PAY CATEGORY 1 COSTS BASED ON THEIR OBLIGATION TO SUPPORT THE SCHOOLS, LIBRARIES AND RURAL HEALTH CARE SUBSIDIES.**

  - **The FCC has already determined that this is a competitively neutral cost recovery mechanism in the universal service order.**

  - **Given that LNP is essential for local competition, it makes sense to base contribution obligations on intrastate as well as interstate end user revenues.**

  - **Adopting the contribution assessment for schools, libraries and rural health care is relatively simple (except that the FCC probably must exempt other providers of interstate telecommunications).**

  - **The FCC Should not adopt transaction-based charges for category 1 costs**

    - **Requires complex cost accounting to determine direct cost of particular activities.**

    - **Most SMS transactions are not discretionary, so requiring payments on a per-SMS transaction basis will not significantly improve efficiency, and will disproportionately affect new entrants.**

- **THE FCC SHOULD REQUIRE CARRIERS TO BEAR THEIR OWN CATEGORY 2 COSTS.**
  - **All competitors in the local market (as well as IXCs) will be required to incur costs for number portability upgrades.**
  - **TWComm has significant number portability upgrade costs, and has fewer customers from whom to recover them than ILECs.**
  - **SBC's proposed tariff shows that the cost of the upgrade per end user for ILECs will be small**

- **THE FCC SHOULD NOT PERMIT CATEGORY 2 COSTS TO BE POOLED.**

  - **PacTel, Ameritech, and U S WEST all agree that this is an inefficient approach (See 8/16 Comments);**

  - **Gives ILECs the incentive to include non-category 2 costs;**

  - **Reduces the incentive to make upgrades in the most efficient manner possible;**

  - **Likely would increase the already high cost of entering the local market;**

  - **Wastes scarce administrative resources by increasing the need for regulatory oversight of all LECs (to ensure that only category 2 costs are recovered);**

  - **Penalizes more efficient carriers by requiring them to pay for less efficient carriers' upgrades;**